



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

BCS/143039

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on October 16, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly placed the Petitioner in a restrictive re-enrollment period from June, 2012 – November 2012 for non-payment of his monthly premium.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner, his wife and two minor children are enrolled in BadgerCare Plus (BCP).

3. On April 16, 2012, the Petitioner was at the agency to discuss his BCP benefits. At that time, the Petitioner paid a monthly premium of \$172 that he owed for April, 2012.
4. On April 17, 2012, the agency issued a Notice of Decision to the Petitioner at [REDACTED]. The Notice informed the Petitioner that he, his wife and his family are eligible for BCP with a monthly premium of \$172 for himself and his wife effective April 1, 2012.
5. On May 18, 2012, the agency issued a Notice to the Petitioner at [REDACTED] notifying the Petitioner that he was placed in a restrictive re-enrollment status for 6 months effective June 1, 2012 for non-payment of his May premium. The notice further informed the Petitioner that any appeal of the agency's action must be filed with the Division of Hearings and Appeals no later than July 17, 2012.
6. On August 14, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by an agency concerning MA, including BCP, must be filed within 45 days of the date of the action. Sections 49.45(5), Wis. Stats.

In this case, the Petitioner filed an appeal 73 days after the agency issued the Notice placing the Petitioner in a restrictive re-enrollment status. The Petitioner testified at the hearing that he did not receive the agency's April 17, 2012 or May 18, 2012 notices. He testified that he had no knowledge of any problems with mail delivery to his home address. He further testified that he learned that he had been placed in a restrictive re-enrollment status in August when he took his wife to the hospital and learned his case had been closed. At that time, he filed an appeal with the Division of Hearings and Appeals.

The agency testified that there is no record of the April and May notices being returned to the agency as "undeliverable" mail.

Based on the evidence, I must conclude that the Petitioner's appeal is untimely. The April and May notices were sent to the proper mailing address for the Petitioner. There is insufficient evidence to demonstrate that there were not delivered. I note, in addition, that the Petitioner was aware in April after his visit to the agency that his eligibility for BCP benefits was dependent on payment of the monthly premium but he does not dispute that he made no attempts to pay the monthly premiums payments after the April premium payment.

CONCLUSIONS OF LAW

The Petitioner's appeal is not timely.

THEREFORE, it is

ORDERED

The petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

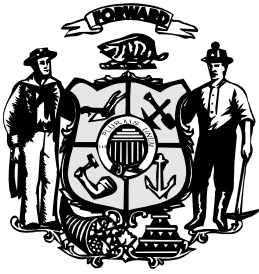
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of November, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Division of Health Care Access and Accountability, DHSDHADHCAA@Wisconsin.gov -
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Enrollment Services



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The preceding decision was sent to the following parties on November 1, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability